

REMARKS

Claims 51 through 56, 88, and 89 are in the application, with claims 51, 88 and 89 having been amended and claims 57 through 87 and 90 through 94 having been cancelled. Claim 51 is the independent claim herein. No new matter has been added. Reconsideration and further examination are respectfully requested.

Claim Rejections

Claim 97 is rejected under 35 U.S.C. §112, first paragraph and 35 U.S.C. §112, second paragraph. Claims 51, 82-86, 91-96 and 102-106 are rejected under 35 USC § 102(e) as being anticipated by Publication No. US 2001/0032167 ("Tulloch"). Claims 52-72, 81, 87-90 and 98-101 are rejected under 35 USC § 103(a) as being unpatentable over Tulloch. Claims 73-80 are rejected as being unpatentable over Tulloch as applied to claim 52 above, and further in view of Experimental Economics by Douglas D. Davis and Charles A. Holt ("Davis"). Claim 97 is rejected as being unpatentable over "A Seasoned Foe Heads Probe of Auctioneers" by Alexandra Peers and Ann Davis ("Peers"), and further in view of Tulloch. Reconsideration and withdrawal of the rejections are respectfully requested.

Claim 51

As a preliminary matter, previously submitted claims 84 and 87 have been incorporated into currently amended independent claim 51.

Amended independent claim 51 describes a method for facilitating the sale of an item. The method comprises initiating an auction for an item, receiving a bid for the item identifying a transformation function associated with the bid applying the transformation function to the bid to produce a transformed bid updating a state of the auction based on the transformed bid and generating status data representing the updated state of the auction. The bid is made by a bidding

auction participant. The transformation function is based on attribute information that comprises at least one of shipping costs, handling charges, and a preferred shipping mode and the transformation function is a financial function. Moreover, identifying a financing function further comprises receiving a request to establish a financing function, identifying a type of the financing function, identifying at least a first term of the financing function, and associating the financing function with the auction participant.

The art of record is not seen to disclose or to suggest the above-mentioned features of amended independent claim 51. In particular, the art of record is not seen to disclose or to suggest identifying a transformation function associated with the bid where the transformation function is a financial function, and where identifying a financing function further comprises receiving a request to establish a financing function, identifying a type of the financing function, identifying at least a first term of the financing function, and associating the financing function with an auction participant.

The Office Action concedes that Tulloch does not disclose receiving a request to establish a financing function but states that it would have been obvious “when two parties enter into negotiations.. a buyer will request a discount or a rebate or other terms of financing...”. Applicants respectfully disagree.

Tulloch, at paragraph [0011] discloses “negotiations for a supply contract” which Applicants believe is different than “the sale of an item” and nowhere can Tulloch be seen to disclose or to suggest that negotiations for a supply contract suggest the sale of an item.

Pursuant to M.P.E.P. §2144.03 “[i]t is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based.” *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697. Furthermore, and as also stated in §2144.03, if the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2).

Therefore, Applicants respectfully request an affidavit or declaration setting forth specific

factual statements and an explanation to support the finding that it would have been obvious that negotiations for a supply contract suggest receiving a request to establish a financing function associated with the sale of an item.

Accordingly, nowhere does Tulloch disclose or suggest identifying a transformation function associated with the bid where the transformation function is a financial function, and where identifying a financing function further comprises receiving a request to establish a financing function, identifying a type of the financing function, identifying at least a first term of the financing function, and associating the financing function with an auction participant. Applicants respectfully believe that the §103 rejection is improper for at least the above-mentioned reasons.

In view of the foregoing, amended independent claim 51 and its related dependent claims are believed to be in condition for allowance.

CONCLUSION

The outstanding Office Action presents a number of characterizations regarding the applied references, some of which are not directly addressed herein because they are not related to the rejections of the independent claims. Applicants do not necessarily agree with the characterizations and reserve the right to further discuss those characterizations.

For at least the reasons given above, it is submitted that the entire application is in condition for allowance and such action is respectfully requested at the Examiner's earliest convenience. Alternatively, if there remains any question regarding the present application or any of the cited references, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is kindly invited to contact the undersigned via telephone at (203) 972-4982.

Respectfully submitted,

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Date

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